Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47839 of 2023

Applicant :- Pradeep
Opposite Party :- State of U.P.
Counsel for Applicant :- Akhilesh Kumar Mishra,Siddharth Saran
Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Siddharth Saran, the learned counsel for applicant and the learned A.G.A. for State.

2. Supplementary affidavit filed by the learned counsel for applicant in Court today, is taken on record.

3. Perused the record.

4. This application for bail has been filed by applciant-Pradeep seeking his enlargement on bail in Case Crime No. 333 of 2023, under Sections 498-A, 304-B, 34 IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Kavi Nagar, District-Ghaziabad during the pendency of trial.

5. Record shows that marriage of applicant-Pradeep was solemnized with Divya on 20.01.2023. However, just after expiry of a period of 1 year and 3 months from the date of marriage of applicant, an unfortunate incident occurred on 21.04.2023, in which, wife of applicant died as she committed suicide by hanging herself.

6. Subsequent to above, a prompt FIR dated 21.04.2023 was lodged by the first informant-Durgesh (father of the deceased) and was registered as Case Crime No. 333 of 2023, under Sections 498-A, 304-B, 34 IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Kavi Nagar, District-Ghaziaba. In the aforesaid FIR, 4 persons namely - (1) Pradeep (husband), (2) Pushpa (Mother-in-law), (3) Charan Singh (Father-in-law) and (4) Ankit (Devar) of the deceased have been nominated as named accused.

7. After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime

number in terms of Chapter-XII Cr.P.C. The inquest (*Panchayatnama*) of the body of deceased was conducted on 21.04.2023. In the opinion of the witnesses of inquest (*Panch witnesses*), the nature of the death of deceased was categorized as suicidal and the cause of death of deceased was specified as hanging. Thereafter, the post mortem of the body of deceased was conducted. In the opinion of Autopsy Surgeon, who conducted autopsy of the body of deceased, the cause of death of deceased was Asphyxiaas a result of ante-mortem hanging. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased:-

"Reddish Brown parchment type ligature mark present over Rt. side of from to predict which is continuous from mid central part of neck till the lower border of Rt. mandible and fades away hereon. Ligature mark present below the Lt. mandible placed 03 cms. Lt. to middle. The ligature mark is placed 05 cms. below there, 5 cm below Rt. ear and 03 cm below the medical end of Rt. maridible. On exploration there is no injury to the underlying neck structures and chey appeared to pale white and glistening. Total neck circumference is 32 cm and width of lighter is 02 cm."

8. Thereafter, Investigating Officer examined first informant and other witnesses under Section 161 Cr.P.C. Witness so examined have supported the FIR. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of 2 of the named accused namely Pradeep and Ankit is established in the crime in question. He, accordingly, submitted the charge sheet dated 01.07.2023. However, investigation in respect of other named accused is said to be pending. Subsequently, the Investigating Officer submitted supplementary charge sheet dated 19.08.2023 whereby the other 2 named accused Pushpa and Charan Singh have also been charge sheeted under Sections 498-A, 304-B, 34 IPC and Sections 3/4 Dowry Prohibition Act.

9. Learned counsel for applicant contends that after submission of aforementioned charge sheet, cognizance was taken by concerned Magistrate upon same. However, as the crime committed by the charge sheeted accused is exclusively triable by the court of Sessions, concerned Magistrate, consequently committed the case to the court of Sessions. Resultantly, Sessions Trial No. 507 of 2023 (State Vs. Pradeep and Others) , under Sections 498-A, 304-B IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Kavi Nagar, District-Ghaziabad came to be registered. Up to this

stage, first informant PW-1, Durgesh Tomar has been examined by court below. However, this witness has not supported the FIR.

10. It is then contended that though applicant is the husband of deceased, a named as well as charge sheeted accused yet he is liable to be enlarged on bail. The occurrence giving rise to present criminal proceedings has occurred after expiry of a period of 1 year, 3 months and few days from the date of marriage of applicant. The deceased was a short tempered lady and she has taken an extreme step of committing suicide by hanging herself. The bona-fide of the applicant is explicit from the fact that except for the ligature mark, no other external ante-mortem injury was found on the body of deceased. The allegations made in the FIR with regard to the demand of additional dowry and commission of cruelty upon deceased have not been substantiated in the statement of the first informant Durgesh Tomar itself. As such, the charge/case is liable to be altered under Section 306 IPC. However, as per the material on record, no abetment, instigation or conspiracy can be inferred against applicant. There is nothing on record to show that the deceased committed suicide on account of an immediate act of applicant either. He, therefore, contends that applicant is liable to be enlarged on bail.

11. Even otherwise, applicant is a man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. Applicant is in jail since 23.04.2023. As such, he has undergone more than 7 months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, up to this stage, no such circumstance has emerged on record necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, he submits that applicant is liable to be enlarged on bail. In case, the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

12. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is the husband of deceased, a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. Admittedly, the death of deceased is a dowry death inasmuch as, the same has occurred within 1 year and 3 months from the date of marriage. Applicant is an inmate of the house where the occurrence occurred and also the husband of deceased. As such, the burden is upon the applicant to not only explain the manner of occurrence but also his innocence in terms

of Section 106 and 113-B of the Evidence Act. However, the applicant has miserably failed to discharge the said burden up to this stage. As such, no sympathy be shown by this Court in favour of applicant. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

13. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that prima-facie, the death of deceased is a suicidal death, the bona-fide of applicant is explicit from the fact that except for the ligature mark, no other external ante-mortem injury was found on the body of deceased, the other charge sheeted accused have already been enlarged on bail, the first informant Durgesh Tomar has deposed before court below as PW-1 but has not supported the FIR, in view of above, up to this stage, there is no cogent evidence establishing the demand of dowry and commission of cruelty upon deceased on account of non-fulfillment of demand of dowry against the applicant, the clean antecedents of applicant, the period of incarceration undergone, the police report in terms of Section 173(2) Cr.P.C. has already been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, yet in spite of above, the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail, but without making any comments on the merits of the case, applicant has made out a case for bail.

14. Accordingly, the bail application is **allowed**.

15. Let the **applicant-Pradeep,** be released on bail in the aforesaid case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

(i) THE APPLICANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE/SHE SHALL NOT SEEK ANY ADJOURNMENT ON THE DATE FIXED FOR EVIDENCE WHEN THE WITNESSES ARE PRESENT IN COURT. IN CASE OF DEFAULT OF THIS CONDITION, IT SHALL BE OPEN FOR THE TRIAL COURT TO TREAT IT AS ABUSE OF LIBERTY OF BAIL AND PASS ORDERS IN ACCORDANCE WITH LAW.

(ii) THE APPLICANT SHALL REMAIN PRESENT BEFORE THE TRIAL

COURT ON EACH DATE FIXED, EITHER PERSONALLY OR THROUGH HIS/HER COUNSEL. IN CASE OF HIS/HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM/HER UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS/HER PRESENCE PROCLAMATION UNDER SECTION 82 CR.P.C., MAY BE ISSUED AND IF APPLICANT FAILS TO APPEAR BEFORE THE COURT ON THE DATE FIXED IN SUCH PROCLAMATION, THEN, THE TRIAL COURT SHALL INITIATE PROCEEDINGS AGAINST HIM/HER, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(iv) THE APPLICANT SHALL REMAIN PRESENT, IN PERSON, BEFORE THE TRIAL COURT ON DATES FIXED FOR (1) OPENING OF THE CASE, (2) FRAMING OF CHARGE AND (3) RECORDING OF STATEMENT UNDER SECTION 313 CR.P.C. IF IN THE OPINION OF THE TRIAL COURT ABSENCE OF THE APPLICANT IS DELIBERATE OR WITHOUT SUFFICIENT CAUSE, THEN IT SHALL BE OPEN FOR THE TRIAL COURT TO TREAT SUCH DEFAULT AS ABUSE OF LIBERTY OF BAIL AND PROCEED AGAINST THE HIM/HER IN ACCORDANCE WITH LAW.

(v) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE RELEASE OF THE APPLICANT.

16. However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his bail so granted by this Court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above.

Order Date :- 5.12.2023
Vinay

Digitally signed by :-
VINAY KUMAR
High Court of Judicature at Allahabad